

# Board of Zoning Appeals

## Munson Township

Minutes of May 17, 2023

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Don Ondrejka, Jim O'Neill, Alternates Roger Simpson and Carol Maver, and Secretary Paula Friebertshauser present. Court Reporter Laura Ware was present. Joe Tomaric was absent. The Pledge of Allegiance was recited.

Mr. Pilawa then explained the role of the Board of Zoning Appeals is to apply certain principles of law as required by the Ohio Supreme Court. He explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. The Board has limited authority and cannot change the zoning, but there is a provision in the zoning resolution for variances. A variance confers a legal right that lasts forever. The Board receives sworn testimony and applies that testimony and evidence to certain standards of law to then make a decision. A court reporter is present so that anyone wishing to speak for or against the case must be sworn in for the record. The record is made up of testimony and evidence presented. If a case goes to court, decisions are based on what is presented the evening of the hearing. Anyone not in agreement with the decision of the Board could file with the Court of Common Pleas within 30 days after the minutes of the meeting are approved. The next meeting will be June 21, 2023.

Don Ondrejka moved and Jim O'Neill seconded to approve the minutes of April 19, 2023, as noted. Motion carried, 4-0.

**CASE 23-07: Larry Crouch** 9947 Mulberry Rd., Chardon OH – requests to construct a 12' x 12' accessory building 10' from the east side property line. Violates SEC. 411 – Minimum Dimensional Requirements- minimum side yard is 25'.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He referred to photographs that showed the approximate location of the shed; the view looking back from the driveway to the east; and from the south and west. He presented two photographs that Mr. Crouch had taken.

Larry Crouch Jr. was sworn in. He explained he needs a shed to store his lawn equipment and snowblower. He chose the location due to the lay of the land. The property lines are trapezoid shape, and looking south the property runs downhill to the west. He measured several times and it is his hope the shed will be more than ten feet in. When asked, he said there would be no electricity, but maybe a solar panel.

Ms. Maver asked if it would possibly be closer than ten feet. Mr. Crouch responded no, it would be further, and the goal is to get it as far away as possible. He approached the table and showed where the shed would be if it were to be 25 feet in. The stake represents the right rear of the outbuilding; it could be 12 to 17 feet off the line. Mr. Ondrejka asked the location of the well and septic. Mr. Crouch pointed out that the well is next to the garage and house and the septic is in the back.

Mr. Pilawa asked if he was going to build it himself. He responded that he would either have someone come out or have it pre-built.

Mr. Pilawa stated there were 26 affected property owners notified in Case 23-07.

Robert Rogish of 9963 Mulberry Road was sworn in. He explained he lives just east of Mr. Crouch and when they look out, they see nothing and that is how they like it. He felt the 25-foot requirement should be adhered to. Mr. Pilawa explained the regulations provide for 25 feet and the ability to get a variance. Mr. Rogish suggested moving it straight back or behind the garage. He felt it would be an encroachment. Mr. Pilawa asked him if it were to go up, would he see it, and would it have any other effect? Mr. Rogish responded they would see it but would not have any other effect.

Mr. Ondrejka asked if there were any trees in the area. Mr. Crouch explained there is a pine tree that could come down and would keep him further than ten feet. If the building were to be 25 feet, it would come into the grassy area that they use. There is brush behind the proposed area that he would like to clear out and put landscape in that would help hide it. He approached the table to point out the area and the rear corner of the shed to Mr. Rogish. Mr. Crouch would like to put in arborvitae to add privacy. The shed out back is getting older and he would like to utilize their two-car garage in the winter. Mr. Rogish asked if he could go back behind the existing garage. Mr. Crouch explained the dogs go there, and there is a garden; it is the one decent area of grass they use. The septic tanks are also behind the garage. He noted that the side of the existing garage is 25 feet. Mr. Ondrejka asked if there were stakes from the survey. Mr. Crouch replied that the neighbor to the west had stakes and he found stakes for Mr. Rogish and himself, but it was hard to measure with trees in the way.

Mr. Ondrejka questioned if it was 38 feet from the garage to the line. If so, it could be measured from the front part of the garage and walk back. He asked Mr. Crouch if he had staked out all the corners. Mr. Crouch commented that the side runs at an angle back and is not parallel. Roger Simpson of 11350 Butternut was sworn in and suggested that he take a stringline back into the yard which would give him the best approximation. Mr. Crouch agreed he could try that.

Mr. Pilawa asked if he had contracted the building out yet. Mr. Crouch replied no that he wanted to wait until the variance process was complete. Mr. Herringshaw commented that it could be closer than 17 feet, but Mr. Crouch was not sure, so he asked for the minimum of 10 feet.

Mr. Rogish and Mr. Crouch discussed the septic area and Mr. Crouch explained that the two septic lines are located behind the garage and the septic area is all wooded. If it were 25 feet in, he would not have much of a yard left and he is trying to tuck it away.

Mr. Pilawa explained there are certain factors the Board needs to consider called the Duncan factors. They are: can there be a beneficial use; is the variance substantial; will the essential character of the neighborhood be altered - depends on the perspective but other than the view there is no evidence that it would be altered; will adjoining properties suffer a detriment - doubt the property value will decrease; the variance would not adversely affect the delivery of government services; the predicament cannot be feasibly relieved through some other method; regarding the spirit and intent

of zoning is to have 25 feet but there is the ability for a variance; and did the property owner purchase the property with knowledge of the zoning restriction – everyone does, it is available online. The Board needs to consider all the factors, but not necessarily give equal weight to, for example, the last factor. The Board exists if there should be a purpose for a variance.

Dolores Rogish asked if they were to sell, would it have any effect on them. Mr. Pilawa explained that a variance runs with the land, but the subsequent purchaser of the Crouch property cannot move it closer. They would have to talk to a realtor to see if a 12 x 12-foot building would be counter intuitive; maybe if it were 20 feet tall it would be a problem, but he did not know. Mr. Simpson commented it would come down to personal opinion.

Jim McCaskey of 11443 Thwing Road commented that there seems to be a vagueness where the property line is. He recommended getting a professional survey. It comes down to who's view is more important. Mr. Pilawa responded that the Board does not get involved in horse trading. Ms. Maver asked if the case could possibly be extended while he got a professional to find out the information. Mr. Pilawa responded that would be up to the applicant. Ms. Maver clarified that she meant a professional that might have ideas, not a surveyor. Mr. Pilawa said yes, but there is a continuance fee. Mr. Pilawa felt that based on the application and record given that evening he didn't know if a continuance was needed. Ms. Pitcock added it probably wasn't necessary. Mr. Crouch reiterated that Mr. Ondrejka had given him good information and he does not want to be at 10 feet and would try to get to 17 feet. Mr. Pilawa cautioned him that if he put it up without a permit Mr. Herringshaw could tell him to take it down. Mr. O'Neill asked the Rogishes if they would be okay with 17 feet. Mrs. Rogish responded as long as he puts in landscaping. Mr. Rogish suggested 20 feet. Mr. Pilawa reminded him that the variance was for 10 feet. Mr. Simpson commented that he used an app on his phone for determining property lines and it was quite accurate.

Mrs. Rogish asked if there needed to be a hardship. Mr. Pilawa explained that was not exactly correct. An area variance is guided by the factors he just reviewed versus a use variance that uses unnecessary hardship as the standard. A use variance is completely different and is very difficult to get.

Danielle Pitcock moved and Don Ondrejka seconded that the variance requested in Case 23-07 be approved as written. When asked if there was any further discussion, Ms. Pitcock felt he had covered most of the factors. Mr. Pilawa summarized that there can be a beneficial use as a home; the variance is not substantial; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment; there was no evidence the delivery of government services would be adversely affected; the predicament (issue) cannot be feasibly relieved through some other method; the spirit and intent would be observed; and there is no consideration given to if the owner knew of the zoning restrictions. Ms. Pitcock added that it sounds like Mr. Crouch is trying to be a good neighbor and it will work out. Upon the roll call, all members voted yes, 5-0; motion carried.

**CASE 23-08: Thomas Hoenk** Parcel 21-176701 Fowlers Mill Rd., Chardon OH – requests to construct an accessory building in front of the principal structure and install a driveway 8' from the south side property line. Violates SEC. 509.2 Accessory structures (in part) -No garage or other accessory structure shall be erected within the front yard of any district and SEC. 511 Driveways (in part)-driveways shall be a minimum of 15' from any lot line.

